

Federal Court



Cour fédérale

**Date: 20221121**

**Docket: IMM-8306-21**

**Citation: 2022 FC 1593**

**Ottawa, Ontario, November 21, 2022**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**ALBERT CONTEH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Albert Conteh, is a national of Sierra Leone. He seeks judicial review of a decision rendered by a visa officer based in the Visa Section of the Canadian High Commission in Accra, Ghana [Officer] dated September 8, 2021, refusing his application for a study permit [Decision]. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay, as stipulated in subsection 216(1) of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227, based on the purpose of his visit, his current employment situation, the limited employment prospects in his country of residence, and his personal assets and financial status.

[2] The Applicant submits that the Officer failed to adequately consider and engage with the evidence, and thus rendered a Decision that is not justified in light of the record. The Applicant further submits that the Officer failed to provide a rationale for his assumptions and engaged in speculation. Finally, the Applicant pleads that the Officer failed to address the Applicant's family ties in Sierra Leone.

[3] For the reasons that follow, this application for judicial review is allowed.

## II. Issue and Standard of Review

[4] The issue before the Court is whether the Decision is reasonable.

[5] In conducting a reasonableness review, the Court must determine whether the Decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85-86 [*Vavilov*]). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov* at para 100).

III. Analysis

[6] The Applicant raises a number of issues with respect to the reasonableness of the Decision. The determinative issue, in my view, is the Officer's treatment of the evidence relating to the financial resources available.

[7] In his application, the Applicant clearly stated that his family is poor. A Canadian resident and friend of the family for over twenty years, Walter Prudent, undertook to be fully financially responsible for the Applicant, including paying his tuition and living expenses, and covering the cost of his travel. Mr. Prudent lives alone and has a four-bedroom house, in which the Applicant would live rent free. Mr. Prudent provided financial statements and evidence that the tuition fees totalling \$11,524.50 had been paid. The evidence before the Officer therefore was that there was no cost to the Applicant or his family in terms of his plan to study in Canada.

[8] The Officer's reasons are recorded in the Global Case Management System [GCMS] notes. With respect to the financing, the Officer states:

I note that PA's proposed plan of studies is to be entirely funded by a third party. The third party purportedly the friend of the PA's uncle. The third party will purportedly also provide lodging and pay for transportation to and from Canada. I note the letter of support provided by the third party. I note the proof of payment of tuition on file, but give less weight to this factor in light of the absence of any evidence regarding the PA's own finances and the economic and employment conditions in the PA's home country.

[9] The Applicant pleads that one can assume that the Officer accepted the evidence and financial documentation from Mr. Prudent. I do note, however, that the Officer referred to

Mr. Prudent as “purportedly” being a friend of the family and will “purportedly” provide lodging and cover the Applicant’s costs. Although the Officer noted the tuition payment by Mr. Prudent, he attributed less weight to Mr. Prudent’s evidence in light of the “absence of any evidence” regarding the Applicant’s own finances and the economic and employment conditions in Sierra Leone. Contrary to what the Officer states, the Applicant had clearly stated he was poor, however, the cost of his education was a gift from Mr. Prudent.

[10] Given the evidence and Mr. Prudent’s declaration that he will be responsible for all the costs associated with the Applicant’s studies in Canada, it is difficult to comprehend why the Applicant’s failure to provide his own financial statements, given he had already clearly stated he was poor, warrants attributing less weight to this factor and/or results in the Applicant not meeting the financial eligibility requirements. The Officer’s focus on what he characterizes as “an absence of any evidence” as to the Applicant’s finances, to the Applicant’s detriment, is not justified in light of the evidence from the Applicant and Mr. Prudent that his studies and expenses will be funded entirely by Mr. Prudent (*Etwaroo v Canada (Citizenship and Immigration)*, 2021 FC 1160 at paras 20-21).

[11] The Respondent pleads that the Officer did not conclude that the Applicant had insufficient finances to fund his tuition and living expenses in Canada. Rather, the Respondent states that the Officer reasonably gave the third party funding little weight because the Applicant had not demonstrated his own finances would act as a pull factor that would incentivize him to return to Sierra Leone.

[12] Given the record, the Officer ought to have been aware that the Applicant did not have assets that would act as a pull factor. Nevertheless, the Officer did not raise that. Rather, he comments that there was an absence of any evidence and then used the absence of evidence as a justification to give less weight to Mr. Prudent's funding of the Applicant. This reasoning is not intelligible. Moreover, if the pull factor was the issue, then the Officer needed to address it outright. Despite the able submissions of counsel for the Respondent, it is not for this Court to rewrite the Decision.

[13] I conclude the Officer's reasoning with regard to the financial resources available lacks the requisite transparency, intelligibility and justification. For this reason, the Decision is unreasonable.

#### IV. Conclusion

[14] For these reasons, this application for judicial review is allowed. The Decision is set aside, and the case is remitted back to a different officer for redetermination. No question of general importance was submitted for certification, and I agree that none arise.

**JUDGMENT in IMM-8306-21**

**THIS COURT'S JUDGMENT is that:**

1. The Applicant's application for judicial review is allowed;
2. The Decision is set aside and the case is remitted back to a different officer for redetermination; and
3. No question of general importance is certified.

“Vanessa Rochester”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8306-21

**STYLE OF CAUSE:** ALBERT CONTEH v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 15, 2022

**JUDGMENT AND REASONS:** ROCHESTER J.

**DATED:** NOVEMBER 21, 2022

**APPEARANCES:**

Karen M. Howley FOR THE APPLICANT

Alexander Menticoglou FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Karen M. Howley FOR THE APPLICANT  
Barrister & Solicitor  
Red Deer County, Alberta

Attorney General of Canada FOR THE RESPONDENT  
Winnipeg, Manitoba